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ABSTRACT

This article discusses some of the options and strategies available to school districts in defending dress codes which mandate uniforms. Three components are essential to a successful defense: the dress code must bear a reasonable relation to the school's pedagogical purpose, it must include alternative avenues of expression, and it must indisputably be a content-neutral regulation of student dress. The article draws on the experiences of an inner-city school in Phoenix to illustrate what can happen when students defy a dress code. It outlines the school's dress code, how it was not intended to suppress speech, the implementation of the code, the students' defiance of the dress code and their subsequent administrative transfer to schools not requiring uniforms, and the legal challenges to this action. The lower courts ruled that a school district's judgments regulating the mode of student dress are subject to considerable judicial deference and that schools have broad discretion to regulate student speech and conduct. The dress code is considered a permissible regulation of student expression under "forum analysis," that is, the school is not considered a public forum. (RJM)

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School Uniforms: A Blueprint for Legal Challenges

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Phoenix, Arizona

On September 6, 1995, the Phoenix Preparatory Academy ("Academy") was poised to begin enforcing its mandatory uniform policy ("Dress Code"). The Academy is an inner-city middle school of seventh and eighth grade students within the Phoenix Elementary School District No. 1 in Arizona ("District").

Of the nearly 1,300 students, two were dissenters represented by a lawyer, Gary Peter Klahr, also a board member of the Arizona Civil Liberties Union ("ACLU"). Despite numerous warnings, on September 6 the two students refused to comply with the Dress Code. They wore blue jeans and T-shirts, one with an American flag that stated, "I Support My Country," and the other with a picture of Jesus Christ on the cross.

Klahr had set the stage for a volatile confrontation. For months preceding enforcement of the Dress Code, Klahr verbally and in writing threatened self-described "guerrilla warfare"[1] against the District and its uniform policy. The press had been notified to assemble in the school parking lot to capture the confrontation the above actions might provoke.

At the height of these tensions, the principal might easily have paraphrased Apollo 13 Commander Jim Lovell's message to Houston by saying: "Phoenix, we have a problem."

This article traces the options and strategies available to school districts in defending aggressive challenges to dress codes which mandate uniforms. It also traces the Dress Code from the development of the mandatory uniform policy through the successful trial and appellate court decisions (*Phoenix Elementary School District No. 1 v. Green*, 189 Ariz. 476, 943 P.2d 836 (1997)), which was the first case in the nation to uphold the constitutionality of a mandatory uniform policy in a public middle school.

As the trend toward mandatory school uniforms increases, more challenges like this one will occur. Hopefully, opposing counsel will deal only with legal issues and avoid disrupting school environments with "guerrilla warfare" tactics like those presented to the Academy. Whatever the spectrum of legal and tactical issues, however, significant lessons can be learned from the Academy's experience.

Essential to a successful defense of a constitutional challenge against a mandatory uniform policy are three things: The dress code must (1) bear a reasonable relation to the pedagogical purpose of the school; (2) include alternative avenues of expression; and (3) indisputably be a content-neutral regulation of student dress. The applicable legal standard will be

1. Examples of Klahr's combative attitude included such voice mail messages to District counsel as: "My guerrilla warfare is conducted the way it has been the last two days. By getting the media worked up, by getting the time of your administrators used up and by basically making it uncomfortable enough that hopefully one of these days you will see the light or feel the heat and will change;" "We are facing guerrilla warfare as I warned you in the spring" (August 1, 1995); "[T]here aren't enough National Guard troops in the state" to deal with the guerrilla warfare (June 25, 1995); "If [the District] wants big trouble, that's what you're going to get" (June 22, 1995); "We do it easy, we do it hard, but we do it my way or the highway. Sorry if that sounds rough, but that's the way I do business" (July 26, 1995); "[W]e will do anything that's ethical or legal and maybe a few things that aren't — although I'm not saying that we will, that we would do that . . . . It's probably going to take a lot more than I've got now, but we're going to break you. We're going to break you if it's the last thing that we do on earth . . ." (September 1, 1995).

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governed by the designation of the school as a public forum, limited public forum or nonpublic form. Elementary and middle schools are typically the latter.

THE ACADEMY

The Academy is an inner-city middle school of over 1,300 seventh and eighth grade students who come from predominantly poor socioeconomic backgrounds, with approximately 94 percent qualifying for free or reduced-price lunch. Their average performance on standardized tests ranks down in the 36th percentile. Academy students reside in some of the highest crime rate areas in Phoenix, with 12 to 14 different gangs represented on the campus. The Academy's student population is 78 percent Hispanic, 11 percent African-American, four percent Native American and seven percent Anglo. In short, the Academy is "a reflection of an inner city school," according to its then principal, Ramon Leyba. He put these demographics in perspective for the trial court:

Q. Do those problems make academic achievement a particular priority for the students in your school?

A. It probably makes it even more so, given the fact that historically ethnic minorities have done poorly in a number of instances in school systems. So that makes it even more important that we create a positive environment in school.

Teaching in an inner-city school today is a constant uphill battle against the ever-present distractions of drugs, poverty, violence, dropouts, gangs, and lack of discipline. In response, dedicated teachers and administrators who care about educating children are trying to develop innovative and workable solutions. They are trying to create an environment where students can concentrate on learning. School uniforms help educators reestablish the discipline, cohesion, unity, and student focus on learning that has been virtually destroyed in many inner city schools. Stricter dress codes and mandatory uniform policies are relatively small reforms that have had remarkable success in reducing discipline problems, increasing attendance, improving safety and enhancing learning.

The Academy adopted its Dress Code for just these sound educational and policy reasons. The Dress Code was never designed to, nor did it ever, suppress student speech or expression.

THE ACADEMY'S DRESS CODE

To help create a positive educational environment, the District's governing board approved a Dress Code in May 1995, applicable to all students who attend the Academy ("the Dress Code"). The Dress Code, among other things, requires Academy students to wear a white polo shirt and navy blue pants/skirts or shorts as a school uniform.

The Dress Code was not undertaken lightly or capriciously. Principal Leyba spearheaded a ten-month evaluation of student uniforms, with extensive research and investigation, including examination of the results of student uniforms at other schools. Based on that study, the District and the Academy administrators determined that a student uniform program would substantially improve the Academy's educational environment for at least eight reasons. Based on testimony from school administrators and others,[2] the trial court found the District adopted the Dress Code with the intent and expectation that it would have the effect of:

> promoting a more effective climate for learning by eliminating clothing distractions, increasing campus safety and security by eliminating "gang clothing" and allowing school administrators and security officers to immediately identify persons trespassing upon the school's campus, improvement of students' sense of school spirit and pride, placing students of varying socio-economic levels on an even footing in regard to their appearances, ensuring that students dress appropriately and eliminating time spent by faculty in enforcing the prior dress code.

The trial court further found that the Dress Code also was intended to alleviate "the pressure and intimidation factor of gang clothing upon the other students," and to "benefit the student body."

The undisputed evidence at trial showed the Dress Code had achieved many of these results after only nine

2. The District and the trial court considered the results of student uniforms at other schools, including two California schools, La Mesa Junior High School, as testified to by Principal Rochelle Neal, and Long Beach Unified School District, as testified to by its Superintendent, Dr. Carl Cohn. Ms. Neal testified that the mandatory student uniform policy at La Mesa Junior High has achieved "tremendous" results, including improved student behavior and attention, an increase in student self-esteem, and improved grades. La Mesa students who choose not to wear the uniform are transferred to another school. Dr. Cohn testified that results at the Long Beach elementary and middle schools since 1994 have been dramatic: improved attendance, improved test scores, a 32 percent reduction in student suspensions, and increased campus safety.

weeks in operation. Based on statistical information and personal observation, the Academy's principal concluded that the Dress Code was directly responsible for a more effective climate for learning, improved attendance, a safer and more positive school atmosphere, reduced student discipline and suspensions, and decreased gang incidents. In short, it was undisputed that the Dress Code enhanced the educational environment and effectiveness of student learning at the Academy. Based on such undisputed facts, the trial court found the "policy reasons [for adoption of the Dress Code] are appropriate matters of concern to the School Board and that the policy itself is reasonable." The appellate court affirmed.

THE UNDISPUTED LACK OF SUPPRESSION OF SPEECH

While the District intended to bestow all the benefits of mandatory uniforms on the Academy's students, it did not intend to infringe upon their First Amendment rights. Dr. Patricia Williams, the District Superintendent, testified that neither the District nor the Academy intended to or had any motivation to suppress student expression through the Dress Code. Her testimony was unrefuted. Similarly, Academy Principal Leyba's testimony was undisputed that there was no motivation or intention in designing the Dress Code policy to in any way suppress speech. The President of the District Governing Board further testified that there was no intention to censor student views.

The administrators' intent was borne out by their actions. Under the Dress Code, students are given numerous alternative channels for expressing their views, including: Wearing expressive buttons, jewelry, and other accessories; class participation; conversations with teachers and administrators; participation in student organizations; use of the Academy's computer bulletin board; circulation of petitions; presentation of their views through their student council representatives; and student conversations. Indeed, one of the students agreed he was able to express through other means the identical views imprinted on the T-shirt he was prevented from wearing under the Dress Code. He recognized his "love of country" message could be equally conveyed through a permissible button, and also agreed the Dress Code permitted him to wear jewelry with a flag. The Dress Code also permitted students to express their personal religious views through other means.

Upon undisputed evidence of ample student opportunity to show and explain their beliefs, the trial court found the Dress Code was not a content-based regulation of student speech, but rather was simply a content-neutral regulation of the medium of student expression. It also found that "the interests of the entire student body outweigh Defendants' freedom of expression rights."

IMPLEMENTATION OF THE DRESS CODE

To ensure maximum effectiveness of the Dress Code, the District governing board determined that only students who agreed to wear the required uniform could attend the Academy. The policy would be undermined and its goals defeated or at least diminished if students could opt for other clothing — be it designer jeans or gang-colored T-shirts.[3] Thus, students who refuse to wear the Academy uniform have to attend a different school where uniforms are not required, either within or outside of the District. The Academy's "Procedures for Implementing and Enforcing the Phoenix Preparatory Academy Dress Code" ("Procedures") provides in relevant part that students who repeatedly refuse to wear the uniform designated by the Dress Code may be "transferred to another school in the District." Both District rules and state law authorize the District to reassign students to another school.

In order to implement the Dress Code in the most sensitive, responsible and effective manner, the Academy allowed a two-week phase-in period for compliance with the Dress Code after school began on August 24, 1995. Beginning on September 6, 1995, the Procedures directed that students who failed to comply with the Dress Code be advised of the requirements of the Dress Code, offered use of a uniform for the day, and a parent be contacted. The Procedures require the Academy to take a series of progressive steps, including parental involvement, to assure compliance by all students with the Dress Code.

APPELLANTS' DEFIANCE OF THE DRESS CODE AND OF ADMINISTRATIVE TRANSFER TO NONUNIFORM SCHOOLS

Throughout the phase-in period, the two students refused to wear the required uniform. The Academy

3. Dr. Cohn and Ms. Neal both testified that an optional program does not work, erodes over time, and destroys the significant benefits to the educational climate achieved at schools with mandatory uniform program.

followed its procedures, including numerous meetings between the students' parents and Principal Leyba. The students and parents were warned that the students could not attend classes at the Academy if they continued refusing to comply with the Dress Code. On September 6, 1995, the first day the Dress Code was enforced, both students arrived again in their blue jeans and "message" T-shirts. At the end of the school day on September 6, 1995, the District exercised its authority to reassign the students to another middle school located within the District, Herrera School. The District would transport the students to a non-uniform middle school at District expense. The new school placements were effective as of the morning of September 7, 1995, and were designed so that neither student would miss any school time.

The District sought to balance the desire of the students to wear T-shirts to school against the best interests of the entire Academy student body to have a consistent uniform policy. The students and their attorney sought a confrontation. It was simply the next step in self-described "guerrilla warfare" against the District and its uniform policy by attorney Klahr. Despite their reassignment to a non-uniform school, the students, their parents, and attorney Klahr arrived at the Academy on September 7, 1995. In defiance of the Academy's rules and the District's placement determination, the students and their parents marched onto the Academy campus, entered classrooms without permission, and distributed literature to other students disparaging the Dress Code.

The District filed a lawsuit to enjoin the students' trespasses. In response, the students filed a lawsuit seeking $2 million in damages for alleged constitutional violations. The students and their counsel wanted a confrontation in front of a waiting press corps.

The District did not bite. The trial court granted the District's request for a temporary restraining order and consolidated the preliminary injunction with a trial on the merits. On October 26, 1995, after a one-day trial, the court held the Dress Code was constitutional and that the students' unauthorized entry onto the Academy premises amounted to trespass. The students appealed.

The issue on appeal was: Is a public school dress code policy which requires students to wear uniforms constitutionally permissible where the regulation is content-neutral, reasonably related to the school's educational purposes, and permits ample alternative avenues of communication?

A SCHOOL DISTRICT'S JUDGMENTS REGULATING THE MODE OF STUDENT DRESS ARE SUBJECT TO CONSIDERABLE JUDICIAL DEFERENCE

" As the trial court recognized, the Arizona Legislature vested the District governing board with broad authority to establish, operate, and govern the schools within the District. *See* ARIZ. REV. STAT. § 15-341, 342. Arizona school districts have the inherent power to adopt student dress codes. *See Pendley v. Mingus Union High Sch. Dist. No. 4*, 109 Ariz. 18, 504 P.2d 919 (1972) (upholding a high school dress code). The Legislature recently made that power express by formally allowing school districts to "[r]equire students to wear uniforms." ARIZ. REV. STAT. § 15-342(22) (as amended by 1995 Ariz. Sess. Laws ch. 268, § 17, approved by the Governor April 19, 1995). Thus, when the governing board of the District authorized the Dress Code on May 16, 1995, it acted well within its authority.

"[S]chool boards are generally afforded considerable discretion in operating public schools." *Edwards v. Aguillard*, 482 U.S. 578, 583, 107 S. Ct. 2573, 2577 (1987). "'The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board' . . . rather than with the . . . courts." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267, 108 S. Ct. 562, 567-68 (1988) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 106 S. Ct. 3159, 3164 (1986)). When school districts adopt dress codes, "Courts should not intrude upon the 'lawfully vested . . . discretion' of the school board." *Pendley*, 109 Ariz. at 23, 504 P.2d at 924. As the United States Supreme Court has repeatedly emphasized, the "education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of . . . judges." *Hazelwood*, 484 U.S. at 273, 108 S. Ct. at 571.

For these reasons, the trial court deferred to the District's judgment regarding the type of student dress at the Academy. The court properly refused to "second guess" the District's judgment in administratively transferring the dissenting students to a nonuniform middle school in the District. It likewise properly deferred to the District's decision not to undermine the Dress Code by allowing any students on the Academy campus to "opt out" of uniforms in favor of T-shirts:

> The defense claims that there are less restrictive means of obtaining these policy goals other than the mandatory uniform policy, such as a uniform policy allowing parental opt out. *It is not for this*

Court to second guess the decision of the School Board as to whether a parental opt out policy is more reasonable than the mandatory uniform policy.(emphasis added)

SCHOOLS HAVE BROAD DISCRETION TO REGULATE STUDENT SPEECH AND CONDUCT THAT IMPAIR THE SCHOOLS' BASIC EDUCATIONAL MISSION

While it is certainly true that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 736 (1969), it is equally true that students do not have the right to say what they want, when they want, while they are in school. Schools have traditionally exercised rigid restraint over student speech in the classroom. The familiar refrain of: "No talking in class!" illustrates the basic, unquestionable nature of school authority over the time, place and manner of student speech.

The Supreme Court has repeatedly recognized that schools exercise "a degree of supervision and control that could not be exercised over free adults." *Vernonia Sch. Dist. v. Acton*, 115 S. Ct. 2386, 2392 (1995). "'[A] proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.'" Id. (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 339, 105 S. Ct. 733, 741 (1985)). Accordingly, "the First Amendment rights of students in the public schools . . . must be 'applied in light of the special characteristics of the school environment.'" *Hazelwood*, 484 U.S. at 266, 108 S. Ct. at 567 (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S. Ct. 3159, 3164 (1986),and *Tinker*, 393 U.S. at 506, 89 S. Ct. at 736). Students have only those rights that are "appropriate for children in school." *Vernonia*, 115 S. Ct. at 2392. Critically, "[a] school need not tolerate student speech that is inconsistent with its 'basic educational mission,' . . . even though the government could not censor similar speech outside the school." *Hazelwood*, 484 U.S. at 266, 108 S. Ct. at 567 (quoting *Bethel*, 478 U.S. at 685, 106 S. Ct. at 3165).

Schools are a special forum in which constitutional rights are evaluated for their reasonableness, with considerable deference to the schools' decisions. The Dress Code restricts only a ***manner*** of student expression which the District has determined is detrimental to the Academy's basic educational mission.

THE DRESS CODE IS A PERMISSIBLE REGULATION OF STUDENT EXPRESSION UNDER "FORUM ANALYSIS"

The appellate court agreed with the trial court that the *Cornelius* "forum analysis" is appropriate and that the Academy is a nonpublic forum. The students ignored the applicable forum analysis and focused instead solely on the "substantial interference" test, articulated in *Tinker*, to prohibit restrictions on the content of student expression. The appellate court held that the *Tinker* test is not applicable because "*Tinker* and its progeny are directed at content-based restrictions on speech. In contrast, the evidence shows the School District's dress code is not intended to restrict speech, but is a content-neutral regulation of student dress that the trial court found furthers reasonable policies and goals of the Academy." *Phoenix Elem.*, 943 P.2d at 838. This finding is strongly supported by the law and the evidence.

The Academy, as a public school, is of course public property. Thus, with the perspective and deference accorded to educators' decisions, the constitutionality of regulations affecting expression at the Academy must be assessed under the "forum analysis" developed by the Supreme Court: Rights of speech on "public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44, 103 S. Ct. 948, 954 (1983); *Hazelwood*, 484 U.S. at 267-68, 108 S. Ct. at 568 (applying forum analysis to assess the constitutionality of restrictions on student speech in a public school). Limitations which the government may lawfully place on classes of speech vary depending upon whether the relevant forum is determined to be one of three classifications: (1) a traditional public forum; (2) a limited public forum created by government designation; or (3) a nonpublic forum. *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 803, 105 S. Ct. 3439, 3449 (1985).

"Forum analysis" involves a three-step approach. The court must first decide whether the speech in question is protected by the First Amendment. *Cornelius*, 473 U.S. at 797, 105 S. Ct. at 3446. The District conceded that the messages conveyed by the students' T-shirts represented protected speech. Next, the court must "identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic. Finally, [the court] must assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard." *Id.*

The appellate court found that a school is generally considered a nonpublic forum for purposes of the First Amendment. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352 (1993); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988); *Hedges v. Wauconda Community United Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993); *Miles v. Denver Pub. Schs.*, 944 F.2d 773 (10th Cir. 1991).

The unrefuted facts showed the Academy did not intend to open, and has not opened, its classes to indiscriminate use. Admission to Academy classes is restricted to enrolled students, their parents, teachers, administrators, governing board members, and authorized guests. Discussion within Academy classes is directed by the teachers, who are empowered to restrict the subject of discussions and to exercise reasonable control and discipline over students who speak out of turn or on impertinent matters.[4]

Other courts that have considered the question of whether a public middle or high school constitutes a public forum agree that such classrooms are nonpublic forums. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1302 (7th Cir. 1993) ("junior high school is a nonpublic forum, which may forbid or regulate many kinds of speech"); *Miles v. Denver Pub. Sch.*, 944 F.2d 773, 776 (10th Cir. 1991) (ninth grade classroom is a nonpublic forum); *Murray v. Pittsburgh Bd. of Pub. Educ.*, 919 F. Supp. 838, 844 (W.D. Pa. 1996) ("A public high school classroom is a nonpublic forum.").[5]

THE DRESS CODE IS A CONTENT-NEUTRAL REGULATION OF THE MANNER OF STUDENT SPEECH

A school district is vested with broad discretion to control expression in its nonpublic forums and to formulate regulations necessary to provide a safe and improved learning environment. *Hazelwood*, 484 U.S. at 273, 108 S. Ct. at 571 (school regulation over "style and content" of student speech does not violate First Amendment if actions are "reasonably related to legitimate pedagogical concerns."). "In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry*, 460 U.S. at 46, 103 S. Ct. at 955; *Cornelius*, 473 U.S. at 806, 105 S. Ct. at 3451.

The appellate court appropriately found from the evidence that the Dress Code is a content-neutral regulation of the manner of student expression. There was simply no evidence that the District or the Academy intended to suppress a particular student view-point through the Dress Code. To the contrary, the evidence showed that students at the Academy, including appellants, were afforded multiple alternative avenues to express their views, both through expressive buttons, jewelry, and other accessories on their uniforms, verbal and written speech inside the classroom, use of the Academy's computer bulletin board, and circulation of petitions.

These alternative avenues of communication were conceded by the appellants at trial. Appellants further conceded that they were permitted to express the very messages of patriotism and religion emblazoned on their disallowed T-shirts through these alternative means. The presence of alternate means to express ideas, and the willingness of the Academy to allow appellants to express their particular messages through such channels, show that the Dress Code was not intended to suppress the Students' viewpoints.

THE DRESS CODE IS REASONABLE AND SERVES A SUBSTANTIAL GOVERNMENT PURPOSE

The appellate court appropriately found that the Dress Code "bears a reasonable relation to the pedagogical purpose of the school." *Phoenix Elem. Sch. Dist. v. Green*, 189 Ariz. 476, 943 P.2d 836 (1997). The reasonableness of the restriction in a nonpublic forum must be assessed in light of the purpose of the forum and all surrounding circumstances. *Cornelius*, 473 U.S. at 810, 105 S. Ct. at 3453. The reasonableness of the "educational mission" of a school like the Academy is assessed with special deference. The appellate court had no trouble concluding that the trial court "had ample evidence to support its finding that the policies underlying the adoption of the dress code were reasonably related to the

4. For example, there can be no dispute that a student could be prohibited from speaking about religion or patriotism during math class.

5. Although both *Miles* and *Murray* involved restrictions on speech by teachers rather than students, they are nevertheless relevant. There is no reason to distinguish between students and teachers where expression in the classroom is concerned. *Miles*, 944 F.2d at 777. "A school's interests in regulating classroom speech — such as 'assur[ing] that participants learn whatever lessons the activity is designed to teach' and that students are not 'exposed to material that may be inappropriate for their level of maturity' — are implicated regardless of whether that speech comes from a teacher or student." *Id.* (quoting *Hazelwood*, 484 U.S. at 271, 108 S. Ct. at 570).

Academy's mission." *Phoenix Elem. Sch. Dist. v. Green*, 189 Ariz. 476, 943 P.2d 836 (1997).

The appellate court concluded that the District presented adequate evidence that it adopted the Dress Code to improve the educational environment by: (1) promoting a more effective climate for learning; (2) increasing campus safety and security by, among other things, making the presence of intruders immediately apparent; (3) fostering school unity and pride; (4) reducing peer pressure for more expensive clothing and eliminating "label competition"; (5) minimizing costs to parents; (6) creating opportunities for self-expression; (7) upholding modesty standards; and (8) promoting a campus atmosphere of respect, pride, self-esteem, and cohesiveness.

Campus safety, in particular, was immediately enhanced by the Dress Code. The Academy's student resource officer testified that in the 1994-95 school year, the Academy had some 50 to 60 different intruders trespassing on the school campus. After the Dress Code, no gang-related arrests were made in the first two weeks, as opposed to nine such arrests the first two weeks of the prior school year. In short, the student resource officer testified that the Academy is "definitely" a safer place since adoption of the Dress Code.

CONCLUSION

This was not a case about suppression of speech or expression. As the two students who brought this suit conceded, they were at all times allowed to convey their particular views at the Academy, just not through T-shirts. Importantly, the students were always allowed to wear T-shirts or other clothing of their choice at schools in the District other than the Academy. Thus, their First Amendment right to freedom of expression was never violated.

This case, like most disputes about school uniforms, was solely about whether or not students are entitled to disregard the Dress Code and thereby undermine the benefits it evokes for all Academy students. The undisputed and overwhelming evidence showed that the District's sole purpose in adopting the Dress Code was to improve the academic, safety and educational environment at the Academy. The evidence showed that the Code achieves that result. Because the Dress Code reasonably regulates the time, place and manner of student dress, and provides ample alternative means of communication, neither courts nor appellants are permitted to "second guess" the District's educational decisions.

Case Notes

School district was not liable for the wrongful death of a student killed by another student off campus, even though the school had a duty to protect the deceased student from foreseeable and unreasonable risks, because school officials were not aware of the other student's dangerous propensities and could not have foreseen the harm to the deceased student as a result of their failure to take disciplinary action against the other student.

Hill v. Safford Unified School District, No. 96-0301 (Ariz. Ct. of Appeals, Div. II January 5, 1998)

http://www.apltwo.ct.state.az.us/cv960301opn.html

Student at the high school shot and killed a fellow student during a confrontation off campus. Both students had been involved in an earlier verbal altercation at school. They were sent to an associate principal who spoke with each of them separately. Convinced the situation had been defused, he released both students without taking further disciplinary action. After classes, a group of students were observed by a teacher outside the school engaged in a confrontation. The teacher told the students to "break it up" and "take it somewhere else." The police were called, but by the time they arrived, the students had left. The students had gathered at a location outside of town. The perpetrator pointed a gun at several students before firing and hitting the victim. During the criminal investigation, it was determined that the perpetrator had obtained the gun from a classmate's vehicle during lunch. In addition, school officials had previously searched the student's locker for weapons because of his rumored affiliation with a local gang. However, no weapons were found. The deceased student's family filed a wrongful death suit against the school district. The trial court granted summary judgment for the school district. It found no liability as a matter of law. On appeal, the family argued that the school knew or should have known of the other student's dangerous propensities. As a result, it was foreseeable that he would harm the deceased student, unless the school took disciplinary action against him.

The appellate court affirmed the trial court's ruling. While it agreed that the school had a duty to the deceased student to protect him from foreseeable and unreasonable risks which was not necessarily limited to school grounds, it held that the school district had not breached its duty to the deceased student. It rejected the family's contention that